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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7, paragraph 4, of the Optional Protocol, concerning communication No. 75/2014*,**

Communication submitted by:	Reyna Trujillo Reyes and Pedro Arguello Morales (represented by counsel Araceli González and María Adriana Fuentes)
Alleged victim:	Pilar Arguello Trujillo (deceased)
State party:	Mexico
Date of communication:	1 August 2014 (initial submission)
References:	Transmitted to the State party on 12 November 2014 (not issued in document form)
Date of adoption:	21 July 2017

1. The authors of the communication are Reyna Trujillo and Pedro Arguello Morales, Mexican nationals, who are submitting the communication in respect of their deceased daughter, also a Mexican national, born on 7 July 1992. The authors claim that, in the investigation of the death of their daughter, the State party violated articles 1, 2, 3, 5 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and its Optional Protocol entered into force for Mexico on 22 April 1981 and 16 June 2002 respectively. The authors are represented.

The facts as submitted by the authors

2.1 Pilar Arguello Trujillo was murdered on 3 September 2012 on a chayote plantation in the Espejo suburb of the municipality of Coscomatepec, State of

* Adopted by the Committee at its sixty-seventh session (3-21 July 2017).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Rosario Manalo, Lia Nadaraia, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

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Veracruz. Her body showed signs of sexual violence, degrading injuries and an inability to defend herself, and had been left unconcealed in a public place, characteristics typical of femicide.

2.2 The investigation by the Public Prosecution Service identified A.R.M., a minor, as the possible perpetrator, and he was therefore transferred to the custody of the Huatusco Special Prosecutor's Office for Juvenile Offences and Conciliation for the continuation of the investigation. The case was subsequently transferred to the Public Prosecutor assigned to the Palma Sola Juvenile Court in the municipality of Alto Lucero.

2.3 Following the investigation, A.R.M. was tried in the juvenile courts for aggravated homicide and acquitted on 3 November 2012 by the acting judge for the trial phase in the juvenile courts, as there was no irrefutable evidence of the accused's guilt. The Special Public Prosecutor for Adolescents filed an appeal on the basis that the evidence presented during the trial had not been properly assessed. However, the verdict was upheld on appeal by the Juvenile Division of the High Court of Justice of the State of Veracruz. According to the appeal verdict, the Court carried out a fresh analysis of the evidence. It confirmed that none of the testimony provided firm, direct and categorical proof that A.R.M. was involved in the crime. The verdict also referred to the reconstruction of the incident carried out by the Public Prosecution Service, during which A.R.M. had explained how he had committed the murder. The Court ruled that the re-enactment lacked probative value because it had not been carried out in accordance with the formalities prescribed by law. Among other things, the reconstruction had taken place before rather than during the oral proceedings. In addition, article 225 of the Code of Criminal Procedure for the State of Veracruz provides that such a procedure may be repeated as many times as is necessary. There was therefore no legal impediment preventing the prosecutors from having the re-enactment carried out before it was offered and admitted during the trial phase. For an accused person to be convicted or acquitted, the presentation of evidence, in the strict sense, must take place during the trial phase. The Court ruled that the evidence submitted by the prosecutor was insufficient to prove that A.R.M. was guilty. In addition, during the trial A.R.M. denied involvement in the crime.

2.4 On 23 October 2013, the author filed an application for *amparo* and protection with Seventh Circuit Criminal and Labour Court No. 3 in Xalapa, in which she alleged a violation of the principles of due process and equality of the parties to the proceedings. On 12 November 2013 the application was dismissed on the grounds that it had been filed after the 15-day period granted under article 21 of the *Amparo* Act from the date on which the authors had been notified of the appeal verdict (25 February 2013). This decision was taken even though it was stated in the decision itself that the author had not been notified personally of the verdict, as required by law. On 3 December 2013 the authors filed an application for remedy of complaint against the decision to dismiss the *amparo* application. The application for remedy of complaint was also dismissed on the grounds that the *amparo* application had been filed too late.

2.5 The authors claim that the domestic remedies were ineffective and resulted in impunity. Owing to the failure of the Public Prosecution Service to produce appropriate and adequate evidence of the crime, the court ruled that there was insufficient proof of the attacker's guilt. Furthermore, the relatives of the deceased were not permitted to intervene in any way in the first-instance proceedings. The author could have filed the appeal as a victim, since she was the mother of the deceased. However, that was not possible because the Public Prosecution Service argued that, as the victims' representative, it was responsible for filing any appeal. The victims were therefore restricted in their ability to defend their own interests

and rights. The fact that the authors could not read or write placed them in a more vulnerable situation and prevented them from taking any kind of informed action to defend their own rights and interests.[1]

2.6 The murder took place against a backdrop of high levels of violence against women, both nationally and in the State of Veracruz, as attested by various reports of national and international institutions. The gravity of the situation led to the classification of femicide as a distinct criminal offence in the State of Veracruz; however, that classification is not applicable if the perpetrator is under 18.

2.7 According to the authors, the authorities that investigated the crime were negligent and failed to take actions that were vital in order to ascertain the truth about what happened. They also failed to consider the statements of witnesses indicating that A.R.M. was guilty. Moreover, they did not consider the possibility of femicide or assess the circumstantial or other evidence or presumptions indicative of the gender-based characteristics of femicide, such as the evidence of sexual violence, presence of degrading injuries, signs of the victim's inability to defend herself and the fact that the body had been left unconcealed in a public place.[2]

2.8 Although there is a protocol of basic procedures to be followed by the Public Prosecution Service in investigations of femicide, which sets out the minimum steps that must be taken in order to ensure due diligence in investigations,[3] the protocol was not applied in this case, which gave rise to gaps and irregularities in the investigation.

2.9 This pattern of conduct reflects, inter alia, the lack of specialized forces responsible for effective and transparent investigations and preliminary inquiries; the lack of special investigation protocols for cases of femicide or the lack of knowledge of them; and the prevalence of a patriarchal culture among judicial staff, who stigmatize victims by repeatedly discrediting their statements, even going as far as to accuse women of having provoked the violence which they have suffered and which they may have reported. As a result of these shortcomings, the number of cases investigated and prosecuted is low and does not correspond with the high number of cases reported. In many cases, even though the criminal offence is clear, discriminatory criteria are used to set penalties that are lenient or under which criminal liability is mitigated, especially where the victim's sexual conduct does not conform to gender roles and stereotypes.

2.10 In the present case, the acting judge for the trial phase in the juvenile courts neither examined nor took into account the relationship of trust between the victim and the attacker, the fact that the victim's body had been left unconcealed in a public place, the sexual violence perpetrated against her or the attacker's subjugation and domination of her and brutality towards her. The fact that the motive for the attack was the victim's refusal to engage in sexual relations was not taken into account.

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[1] The authors make these assertions but do not explain in what way the relatives of the murder victim may intervene in the proceedings under the State's criminal law or what provisions of the law were breached in that respect.

[2] The verdict reads as follows: "The evidence presented at the trial indicates that, in the crime that has been proved, undue advantage was an aggravating circumstance ... since it is clear from the conduct in question that the perpetrator of the offence, who was not vulnerable, was not at risk of being killed or injured by the victim who, as a woman, was at a clear disadvantage regarding her ability to defend herself, particularly as she could not seek help because the crime occurred in a deserted location." The verdict also states that the body was found with the trousers down to the knees and the bra pulled up to the neck and that, according to the reports of the medical experts, the main cause of death was asphyxiation by strangulation.

[3] The authors do not explain the nature of these basic procedures.

The complaint

3. The authors assert that the facts demonstrate a lack of access to appropriate and effective judicial and administrative mechanisms for the proper investigation of the death of their daughter, which resulted in impunity. They therefore claim a violation of articles 1, 2, 3, 5 and 15 of the Convention.

State party's observations on admissibility

4.1 On 12 January 2014 the State party challenged the admissibility of the communication.

4.2 The State party contends that the authors did not exhaust domestic remedies because the *amparo* application was filed after the deadline established by law. The ultimate remedy for the protection of human rights is an action for *amparo*. Since the authors allege omissions and negligence on the part of both the judicial and the prosecution authorities during the criminal proceedings against A.R.M., the remedy of *amparo* is the appropriate one for dealing with their claims. Contrary to what the authors state, Reyna Trujillo was notified of the appeal verdict handed down on 17 January 2013. Under article 17 of the *Amparo* Act, "an application must be filed within 15 days". This provision must be applied taking into account the rules on notification established in Mexican law. In this regard, article 121 of the Code of Criminal Procedure for the State of Veracruz provides that "if, despite the fact that no notification has been made in the manner provided for, the person who should have been notified is shown to be aware of the ruling, the notification shall be held to have been made, without prejudice to the imposition of the relevant penalty on the wrongdoer". In this connection, the Mexican courts have established, in relation to the direct *amparo* application, that "in order to determine the validity of the application, it must be considered whether the complainant was aware of the act or of its execution, or whether he or she was shown to be aware of it before having been notified of the contested ruling; the certification provided for in article 163 of the *Amparo* Act is not necessarily relevant".[4]

4.3 In the present case, the court was clear in determining that the law itself "establishes the obligation to notify the aggrieved party, the victim or his or her legal representative personally rather than through (...) the State Attorney General of rulings that require redress for the harm caused, so that the right of appeal can be exercised". In that regard, "in order that the aggrieved party is able in practice to exercise his or her right to challenge, through an action for *amparo*, a judgment that he or she considers to be in violation of guarantees, that party must have an effective remedy and actual knowledge of the judgment handed down by the appellate court". In that regard, the Federal Court recognized that the author should have been notified personally, which could have taken place through her legal representative; the period of 15 days would start as soon as "the person who is to be notified is shown to be aware of the ruling".

4.4 The authors requested certified copies of the judgment of 3 November 2012 in writing; the request was received by the Office of the State Attorney General on 5 February 2013. Their legal representative received the copies on 22 February 2013, according to a certificate signed by the representative. It cannot therefore be claimed that the late filing of the *amparo* application on 23 October 2013 is attributable to the State.

4.5 Since they disagreed with the calculation relating to the filing of the *amparo* application, the authors were entitled to file an application for remedy of complaint,

[4] Opinion issued in 2013 by Seventh Circuit Criminal and Labour Court No. 3.

as provided for in article 103 of the *Amparo* Act. However, the application for remedy of complaint was also filed by the authors' representatives after the deadline prescribed by law.

4.6 The State party maintains that the communication is insufficiently substantiated. The authors assert that the Mexican authorities acted with "gender blindness and with sexist and misogynistic prejudice and discrimination", but they do not explain the reasons for this assertion.

4.7 The State party also contends that the communication is incompatible with the provisions of the Convention. It is not for the Committee to reassess the findings of fact or evidence reached by the authorities of a State unless the State's actions were clearly arbitrary or constituted a denial of justice. The State party considers that the interpretation of the law, the relevant proceedings and the assessment of evidence are matters of domestic jurisdiction. Furthermore, in the present case it cannot be concluded that the actions of the authorities involved in the criminal proceedings against A.R.M. were clearly arbitrary or constituted a denial of justice.

State party's observations on the merits

5.1 In its observations on the merits of 22 May 2015, the State party maintains that the facts set out in the present communication do not constitute violations of the Convention.

5.2 Under article 2 of the Convention, States parties may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and prosecute acts of violence. The present communication deals with the taking of the life of Pilar Arguello Trujillo. However, there is nothing in the information submitted by the authors of the communication or in the investigations initiated by the Mexican authorities to indicate the direct involvement of State actors in the murder. The Committee must therefore analyse whether the Mexican State fulfilled its obligation of due diligence with regard to both the prevention and the investigation and punishment of that act.

5.3 The elimination of violence against women is a priority and a permanent strategy of the Mexican State; various public policies have therefore been implemented with a view to fostering cultural change to counter the male-centred and patriarchal ideas that are still prevalent in Mexican society. The State is currently working to address this problem through a systematic and cross-cutting and coordinated approach, with the involvement of all sectors.

5.4 With regard to the pursuit of justice, the State has produced a plan for preventing and dealing with crimes involving gender-based violence in all its forms. Accordingly, the National Justice Programme 2013-2018 has recognized cases of violence against women as high-impact crimes, which are therefore treated as a priority by the State. The main objective is to ensure that all measures to raise the awareness of the authorities and/or public servants of the need for proper care and protection of victims of such crimes result in effective guarantees of access to justice for women who report acts of violence. The strategy provides for various investigation protocols that establish gender-sensitive guidelines for use by prosecutors, police and experts throughout the country when they investigate crimes of femicide and rape. The purpose of these protocols is to provide a theoretical and methodological basis for gender mainstreaming and to promote the application of standards of international law relating to the human rights of women and girls in the pursuit of justice.

5.5 The aforementioned instruments include the protocol for gender-sensitive investigation by prosecutors, police and experts with respect to the crime of

femicide, and the protocol for gender-sensitive investigation by prosecutors, police and experts of cases of sexual violence. In addition, the protocol of the National Supreme Court of Justice on gender-sensitive proceedings is aimed at dealing with the problems identified by the Inter-American Court of Human Rights in the *"Campo Algodonero" ("Cotton Field"), Fernández Ortega et al.* and *Rosendo Cantú et al.* cases and implementing the reparation measures ordered by the Court. The main purpose of the protocols is to ensure that prosecutors and justice system officials are capable of identifying and assessing objectively the differing impacts of crimes that involve gender-based violence. The protocol of the National Supreme Court of Justice on gender-sensitive proceedings is used at the local level, including in the State of Veracruz. In order to ensure that the protocol and other existing guidelines — both national and international — are implemented properly, the Institute of Education, Training, Specialization and Professional Development of the Judiciary in the State of Veracruz provides ongoing training to justice officials in the State.

5.6 In accordance with the obligations set out in the Convention, States parties may be responsible for the acts of private individuals where there is a potential risk to a particular victim and the local authorities nonetheless fail to act with due diligence. There was no clear evidence in the present case of a specific potential risk to Pilar Arguello Trujillo before she lost her life. Still less was there evidence that the Mexican State was aware of the victim's situation moments before the violence that was perpetrated against her. Since there is no evidence that could engage the responsibility of the State party for the prevention of this murder, the Committee has only to analyse whether the State acted with due diligence during the investigation of this act of violence.

5.7 Under article 2 of the Convention, States parties are obliged to provide legal protection as part of the policy of eliminating discrimination against women.[5] Likewise, "States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors".[6] In that regard, the Committee has specified that "where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions".[7] In that context, it has been recognized at the international level that States' obligation to investigate private acts is of a particular nature, in that it is an obligation of conduct and not of result and it must be assessed on the basis of all the actions taken by a State.[8]

5.8 In the present case, the authors maintain that the actions of the Mexican authorities involved in the proceedings against A.R.M. are contrary to the State's obligations under the Convention. The Committee should assess the proceedings undertaken by the State against A.R.M. but not their outcome. Similarly, in analysing the investigations conducted by the authorities, the Committee should be mindful of the subsidiary nature of its role. In that regard, the Committee has emphasized that, when analysing States' fulfilment of the above obligation, it does

[5] The Committee's general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention (2010), para. 31.

[6] Ibid., para. 34.

[7] Ibid.

[8] The State party cites, inter alia, the Inter-American Court of Human Rights, case of *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988 (merits), Series C, No. 4, para. 177.

not replace the domestic authorities in the assessment of the facts, nor does it decide on the alleged perpetrator's criminal responsibility.[9]

5.9 Regarding the handling of this case by the Mexican authorities, the State party indicates that the Coscomatepec municipal police headquarters in Veracruz reported the discovery of Pilar Arguello Trujillo's body to the Municipal Public Prosecution Service on 3 September 2012. The latter then launched prosecution investigation No. 059/2012 against the perpetrators. On 5 September 2012, the Municipal Public Prosecution Service declined jurisdiction and transferred the case to the Huatusco Special Prosecutor's Office for Juvenile Offences and Conciliation in Veracruz, owing to the underage status of A.R.M. On 6 September 2012 that Office transferred the case to the Palma Sosa Special Prosecutor's Office for Juvenile Offences in Veracruz, which submitted its written *atribución de conducta* (document indicating the accused's probable involvement) to the due process judge. The judge registered the proceedings and held a hearing to endorse and certify the detention of A.R.M. as a minor. As a precautionary measure, he was ordered to be held in pretrial detention at a special detention centre for adolescents. On 12 September 2012, the committal hearing took place for his probable involvement in the crime of aggravated homicide. On 21 and 25 September 2012, the judge ordered that a trial be held.

5.10 The Special Prosecutor's Office filed an indictment against A.R.M. and provided the supporting evidence. The trial hearing was held on 29 November 2012, during which the charges were read out, opening statements were delivered by the Special Prosecutor's Office, and the minor's defence counsel set out their initial position. Each party's evidence was subsequently presented. The Juvenile Court assessed the evidence submitted by the Special Prosecutor's Office (witness statements, expert testimony and documentary evidence) and concluded that it was sufficient to establish the crime of aggravated homicide with undue advantage.[10] Contrary to the claims made by the authors of the communication, the Court did in fact take into account the victim's status as a woman and the vulnerability of her situation. The Court emphasized the nature of the crime, including the deserted location of the crime scene, and pronounced asphyxiation by strangulation the main cause of death. However, the Court determined that there was insufficient evidence for A.R.M. to be found guilty, since it did not clearly indicate the circumstances in which the accused could have met with Pilar Arguello Trujillo on the day in question. A.R.M. was acquitted on 3 November 2012 on the grounds that insufficient evidence had been found to prove that he was the likely perpetrator.

5.11 The Special Prosecutor's Office filed an appeal on 20 November 2012. The Court of first instance hearing the case transmitted the records of the proceedings to the Juvenile Division of the High Court of Justice of the State of Veracruz, which scheduled a hearing for 15 January 2013. On 17 January 2013, the Division delivered its verdict, upholding the verdict of first instance. The Division found that the first-instance ruling had been based on substantiated, well-reasoned, accurate and consistent principles. In addition, the items of evidence submitted by the parties were again meticulously analysed, individually and as a whole. In a manner similar to the verdict delivered by the Court of first instance, the second-instance verdict indicated that there was sufficient evidence to establish the crime of aggravated

[9] Communication No. 18/2008, *Vertido v. the Philippines*, views adopted on 16 July 2010, para. 8.2.

[10] According to the appeal verdict "undue advantage in the crime of homicide implies the superiority of the perpetrator over the victim, provided there is an awareness of this superiority or immunity; there are two elements involved ... one is objective or material, the other subjective; in the first case, the accused is physically stronger and the victim is a woman; in the second, the perpetrator must be fully aware of his superiority over the woman".

homicide with undue advantage; however, there was insufficient evidence to establish the guilt of A.R.M.

5.12 The parties were notified of the verdict handed down by the Juvenile Division, both personally and through the Division's list of decisions. Since the representatives of the authors of the communication were not interveners registered with the Public Prosecution Service, they were not directly notified by the Division. However, in a letter dated 5 February 2013, the authors requested single copies of the appeal verdict, which were sent and received by their representative on 22 February 2013. The 15-day period stipulated by the *Amparo* Act for the submission of the corresponding application for *amparo* did not commence until that date. However, it was not until 23 October 2013 that the authors' legal representatives submitted an application for *amparo* in respect of the appeal verdict.

5.13 The application for *amparo* alleged the same points as were submitted by the authors of the communication to the Committee and was therefore the appropriate remedy in order to address their claims at the domestic level.

5.14 Article 2 of the Convention establishes an obligation of States parties to abstain from engaging in any act or practice of direct or indirect discrimination against women.[11] Similarly, States parties have an obligation "to ensure effective protection of women against any act of discrimination through law and through competent national tribunals and other public institutions".[12] At the same time, the Committee has determined that the Convention requires States parties to modify and transform gender stereotypes that are perpetuated through a variety of institutions, including laws and legal systems, as well as by State actors from different branches and levels of government.[13] In this regard, the Mexican State recognizes that stereotypes affect women's rights to a fair trial. The responsibility of a State should therefore be evaluated in the light of the gender sensitivity applied by the judicial authorities in a particular case.[14] Nevertheless, the Committee has established that it should not review the evaluation of facts and evidence carried out by national courts and authorities, unless that evaluation is arbitrary or discriminatory.

5.15 As a preliminary point, the State party reiterates that the authors have failed to substantiate their claim that the Mexican authorities acted with gender blindness or with sexist and misogynistic prejudice and discrimination. Subject to the above, and for the purpose of considering the merits, the State points out that the authors have not identified any stereotyping or discrimination that had an impact on the actions or decisions of the Mexican authorities.

5.16 The authors state that the Mexican authorities failed to take into consideration the victim's status as a woman or her particular situation of vulnerability. The State party contests this assertion and notes that the courts considering the case did take these factors into account. Both the Juvenile Court and the Juvenile Division ruled that Pilar Arguello Trujillo had been the victim of aggravated homicide with undue advantage. In any event, the failures alleged by the authors would have had an impact on the finding of homicide — which was indeed at issue in the present case — but not on the determination of the guilt of A.R.M. Here, no evidence exists to suggest that the Mexican authorities arrived at their decisions on the basis of gender stereotypes or discrimination.

5.17 The State party submits that the failure to find A.R.M. guilty for the murder of Pilar Arguello Trujillo does not engage the international responsibility of the

[11] General recommendation No. 28, para. 35.
[12] Communication No. 28/2010, *R.K.B. v. Turkey*, views adopted on 24 February 2012, para. 8.2.
[13] Ibid., para. 8.8; see also communication No. 18/2008, para. 8.4.
[14] Communication No. 18/2008, para. 8.4.

Mexican State. The obligation of States to investigate private acts is an obligation of conduct and not of result, which must be assessed on the basis of all the actions taken by a State. The Inter-American Court of Human Rights has maintained the same idea by establishing that "the State's obligation to investigate consists mainly in determining liability and, where appropriate, conducting a trial that may lead to a conviction".[15] However, the Court has clarified that "the aforementioned obligation is an obligation of conduct and is not breached simply because an investigation does not produce a satisfactory outcome".[16] In addition, the Court has emphasized that "the measures taken to investigate the facts should be evaluated as a whole and it is not for the Court [or in this case the Committee], in principle, to determine their appropriateness".[17] The Committee has established a similar interpretation by stating that it does not replace the domestic authorities in the assessment of the facts, nor does it decide on the alleged perpetrator's criminal responsibility.[18] In the present communication, the Mexican State exhausted the main line of investigation concerning the responsibility of A.R.M. From the various measures taken by the prosecution service, it was possible only to establish the aggravated homicide of Pilar Arguello Trujillo and not to conclude that A.R.M. was the perpetrator. The conclusion reached by the Mexican courts was based on the rules and principles governing criminal law. It was not a decision based on gender stereotypes or discrimination against women. The fact that the Mexican courts have not determined criminal responsibility for the murder of Pilar Arguello Trujillo does not constitute grounds for the Committee to conclude that the State failed to meet its obligation to investigate with due diligence.

Authors' comments on the State party's observations

6.1 The authors submitted comments on the State party's observations on 21 August 2015.

6.2 As to the State party's observations on admissibility, the authors argue that they have exhausted domestic remedies. They reiterate that they were not allowed to intervene in the proceedings on the grounds that the Special Prosecutor's Office was the "person" authorized to intervene on their behalf. This meant that they were never appropriately notified of the appeal verdict. They had no real or effective knowledge about the decision since they were not notified personally, i.e. at their home, as required by domestic law.

6.3 With regard to the State party's observations on the merits, the authors note that, while legislation has been adopted with a view to ensuring the rights of women, this legislation has been inoperative and ineffective in practice, since there are no appropriate mechanisms in place for its implementation. Thus, in the present case there has been no effective access to justice, since to date the murder of Pilar Arguello Trujillo has gone unpunished. The lack of proper implementation of public policies to foster the cultural changes referred to by the State reflects the continued violation of the human rights of women. The State party acknowledges the violence in the country, but this is not being effectively addressed.

6.4 At the time of the murder of Pilar Arguello Trujillo, the crime of femicide was defined in the Criminal Code of the State of Veracruz but a murder could be treated

[15] Inter-American Court of Human Rights, *Tarazona Arrieta et al. v. Peru*, judgment of 15 October 2014, p. 31.

[16] Ibid.

[17] Inter-American Court of Human Rights, *Tarazona Arrieta et al. v. Peru*, judgment of 15 October 2014, p. 31; Inter-American Court of Human Rights, *Castillo González et al. v. Venezuela*, judgment of 27 November 2012 (merits), Series C, No. 256, para. 153.

[18] Communication No. 18/2008, para. 8.2.

as femicide and investigated as such only where the perpetrator was of legal age. As the perpetrator in this case was a minor, and thus the proceedings were handled differently, the investigation carried out was of aggravated homicide and not femicide. Accordingly, the basic procedures set out in the protocol of basic procedures to be followed by the Public Prosecution Service when investigating crimes against freedom, sexual safety and the family, or the crimes of gender-based violence and femicide, were not carried out. However, the murder was clearly gender-based, since the investigation itself determined the presence of at least two of the variables characteristic of the crime of femicide.

6.5 Despite the mechanisms that are being put in place by the State party to guarantee the human rights of women, such as legislation, protocols and training, the vast majority of cases of violence are still not formally investigated, tried or punished by the justice system either at the federal or at the state level.

6.6 The authors disagree with the State party's contention that there was no clear evidence in the present case of a specific potential risk to Pilar Arguello Trujillo before she lost her life. They state that one of those risks was that, at the time of the incident in question, the crime of femicide was not listed as a serious offence in the Juvenile Offences Act for the State of Veracruz.[19] As a result, the minimum steps set out in the aforementioned protocol were not carried out. Another potential risk was that justice system staff did not carry out an investigation or analyse the facts from a gender perspective. While it was found that "undue advantage" was an aggravating factor, that factor is insufficient. The investigation should have included a proper assessment of the evidence and should have taken into account the grave context of violence in which the crime occurred. In this case, the officers involved in the investigation and the administration of justice acted with a lack of gender sensitivity and with prejudice and discrimination. This resulted in negligent conduct and a failure to take actions that were vital in order to ascertain the true facts.

Additional information submitted by the parties

7.1 At the request of the Committee, the State party submitted additional information, dated 21 October 2016 and 3 May 2017, on the operation of the remedy of *amparo* in Mexico. This remedy is regulated by the *Amparo* Act. Article 5 of the version of the Act in force at the time of the events indicates who can pursue *amparo* proceedings: "the victim or persons who, under the law, are entitled to receive reparation for injury or to file a civil claim in connection with an offence, as the case may warrant, may pursue *amparo* proceedings against criminal judicial acts, provided that those acts affect such reparation or civil claim". With regard to time limits for applying for *amparo*, the State reiterates the information provided in its observations on admissibility and its position that the communication is inadmissible because domestic remedies were not exhausted.

7.2 In its observations dated 3 May 2017, the State party indicated that by filing amparo proceedings against a judgement on a criminal case, the victims of the crime are able to formulate complaints on the occurrence of the crime, the responsibility for it and the penalty imposed, including issues related to reparation. As it happened in the present case, the victims may challenge through amparo the contents of the final judgment, and argue the breach of procedural rules which resulted in their defencelessness during the proceedings. Amparo is an extraordinary remedy which operates outside the criminal justice system, has its own features, and its purpose is to examine whether the authorities acted in conformity with the Constitution. Amparo does not constitute an instance within the criminal justice system. If amparo is granted in view of procedural flaws committed during the criminal

[19] This offence was added to the Act in question on 30 July 2013.

proceedings the amparo court can order the reopening of such proceedings in order to eliminate the flaws identified.

7.3 The State party reiterates that if filed on time amparo would have been an effective remedy, in view of the fact that the authors are entitled to challenge the not guilty judgements issued by the ordinary courts. Furthermore, the appropriateness and effectiveness of amparo was not contested by the authors.

7.4 On 24 November 2016 and 3 June 2017, the authors submitted comments on the additional information provided by the State party. They note that the provision of assistance to the indirect victims of crimes of homicide or femicide, in the present case the family members of the deceased, is a slow process in the State party, and one which only began with the adoption of the General Victims' Act, at the federal level, in 2013 — after the events that are the subject of this communication had taken place. The issuance, by Federal Courts, of decisions concerning the rights of victims in the criminal procedure, as the State party explains, shows that the law in this respect was unclear, in particular at the time of the facts in the present communication, and that its clarification by the courts was therefore necessary. There was also lack of clarity as to which authority was competent to notify the judgment to the victims.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72, paragraph 4, it is to do so before considering the merits of the communication.

8.2 In accordance with article 4, paragraph 2(a), of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.3 With regard to article 4, paragraph 1, of the Optional Protocol requiring the exhaustion of domestic remedies, the Committee notes that authors must use the remedies in the domestic legal system that are available to them and that would enable them to obtain redress for the alleged violations. The Committee notes that the authors question the way in which the Public Prosecution Service conducted the investigation, including the failure to provide appropriate or sufficient evidence to prove that A.R.M. was guilty of committing the crime of homicide against the victim, Pilar Arguello Trujillo. They also question the manner in which the judges evaluated the evidence and assessed the facts. The Committee also notes that, in relation to these questions, the author filed an application for *amparo* and protection with the Seventh Circuit Criminal and Labour Court, in which she alleged a violation of her rights to due process and equality of the parties to the proceedings. The authors have also alleged that the State party has failed, after the acquittal of A.R.M., to resolve the criminal case, and bring perpetrators to justice.

8.4 The Committee also notes the observations by the State party that the authors did not exhaust domestic remedies because the *amparo* application was filed after the deadline established by law.

8.5 The Committee will consider separately the authors' claims pertaining to (a) the alleged procedural **gaps and irregularities** in the judicial proceedings; and (b) the lack of **further** investigation in the crime, which remains unsolved and unpunished to date.

8.6 Regarding the first part of the authors' claim, for which the authors filed an amparo application, the Committee notes that such application was only filed on 23 October 2013, that is months after the statutory deadline. The Committee further notes that this delay cannot be attributed to the State party, as the authors did not deny receiving notification of the decision of their appeal on 25 February 2013. Accordingly, the Committee considers that, by failing to avail themselves of the remedy of amparo to challenge the procedural defects they are now presenting before the Committee, the authors have not met the requirement to exhaust domestic remedies, set forth in article 4(1) of the Optional Protocol. For this reason, this part of the communication is declared inadmissible.

8.7 As for the second part of the authors' claim, pertaining to the lack of further investigation into the murder of Pilar Arguello Trujillo, the Committee observes that since the acquittal of the alleged perpetrator A.M.R. the State party has not indicated that there had been any other investigative aiming at clarifying the facts and bringing perpetrators to justice. The Committee is of the view that the prosecution of crimes, in particular homicide, is a function which belongs solely to States, and which should be performed with due diligence, and ex officio in accordance with criminal law procedure, irrespective of any recourse to other legal procedures, such as an appeal for *amparo*, that may or may not be undertaken by the relatives of the victim.

8.8 In the present case, the Committee notes that the murder of Pilar Arguello Trujillo took place in September 2012; that the individual charged with the murder was acquitted in November 2012, a decision which was confirmed on appeal by the High Court of Justice of Veracruz on 17 January 2013; since then, no investigative acts appear to have been undertaken. In the circumstances, the Committee considers that the application of domestic remedies has been unreasonably prolonged, and that the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the authors highly unlikely. Consequently, the Committee concludes that the communication is admissible under article 4(1) of the Optional Protocol as far as the second part of the authors' allegations is concerned, contained in para 8.7 above.

8.9 The Committee further notes the State party's argument, that the communication is incompatible with the provisions of the Convention, as implementation of the appropriate procedures and assessment of evidence are matters of domestic jurisdiction, and that in the present case it cannot be concluded that the actions of the authorities in charge of the criminal proceedings were arbitrary or constituted a denial of justice. In light of the arguments presented by the authors however, the Committee cannot conclude that the allegations brought before the Committee are incompatible, rationae materiae, with the Convention, within the meaning of article 4(2)(b) of the Optional Protocol.

8.10 The Committee further notes the State party's claim that the communication is unfounded because the authors have failed to substantiate their claim that the Mexican authorities acted with "gender blindness and with sexist and misogynistic prejudice and discrimination".

8.11 The Committee recalls that authors' complaint in the present communication is that the murder of their daughter has remained unpunished, and that the authorities in charge of investigation and prosecution did not take all necessary measures to clarify the facts and attribute responsibility for them. The Committee also recalls its jurisprudence to the effect that it is not its function to replace the national authorities in the assessment of the facts and evidence, nor does it decide on the

alleged perpetrator's criminal responsibility.[20] The Committee considers that it is for the courts of States parties to the Convention to evaluate facts and evidence and to determine the applicability of national law to specific cases — unless it can be established that such evaluation was biased or based on gender stereotypes that constitute discrimination against women, or was clearly arbitrary or amounted to a denial of justice.

8.12 Notwithstanding the above, the Committee considers that, for purposes of admissibility, in the present communication the authors have sufficiently substantiated their complaint regarding the absence of further measures by the national authorities to clarify the circumstances surrounding the homicide of Pilar Arguello Trujillo and establish the corresponding penal responsibility. Consequently, the Committee considers that this part of the communication is admissible under article 4(2)(c) of the Optional Protocol.

8.13 Accordingly, the Committee considers that the communication is admissible, that it raises issues under articles 1, 2, 3, 5 and 15 of the Convention, and that it should be considered on the merits, for the part not linked to the procedural gaps and irregularities alleged by the authors.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State party, as provided in article 7, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the authors' allegations that this case took place against a backdrop of high levels of violence against women and impunity in cases brought before the courts. In this regard, the Committee recalls that, in its concluding observations on Mexico, it stated the following:[21]

> 17. The Committee takes note that article 21 of the General Act on Women's Access to a Life Free of Violence defines feminicide as the extreme form of gender violence against women, a product of the violation of their human rights, in both public and private, formed by the misogynistic set of behaviours that can lead to social and state impunity and may culminate in murder or other forms of violent death of women. However, it is concerned about deficiencies and different definitions of the crime of feminicide in the local penal codes. It expresses its deep concern about the high and increasing numbers of feminicides committed in several states, such as Chiapas, Guanajuato, Jalisco, Nuevo León, Oaxaca, Puebla, State of Mexico, Veracruz and Quintana Roo, as well as in Mexico City and Ciudad Juárez. It is further concerned about inaccuracies in the procedures to record and document killings of women, which undermine the proper investigation of cases, prevent the families of the victims from being promptly notified and preclude a fuller and more reliable assessment of feminicide.
>
> 18. The Committee is further concerned about:
>
> (...)
>
> (c) The low numbers of cases of violence against women that are reported before the authorities because women are fearful of retaliation

[20] Communication No. 34/2011, *R.P.B. v. the Philippines*, views adopted on 21 February 2014, para. 7.5; Communication No. 30/2011, *M.S. v. the Philippines*, decision of inadmissibility adopted on 16 July 2014, para. 6.4.

[21] CEDAW/C/MEX/CO/7-8, concluding observations on the combined seventh and eighth periodic reports of Mexico, 7 August 2012.

measures and do not trust the authorities; and the lack of standardized protocols for investigating and prosecuting cases of violence against women, which hamper the right of victims to access justice and leave a high proportion of cases unpunished, as pointed out by the Inter-American Court of Human Rights in the "*Campo Algodonero*" case;

(d) The persistent impunity with respect to the investigation, prosecution and punishment of perpetrators of acts of violence against women across the country.

9.3 In the present case, the Committee notes that after the date of acquittal of the person initially charged with the murder of Pilar Arguello Trujillo, the authorities of the State party do not appear to have carried out any activity with a view to clarifying the circumstances of the crime or identifying the perpetrator, such as opening new lines of investigation.

9.4 The Committee recalls that, pursuant to its general recommendation No. 19, the definition of discrimination under article 1 of the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights is discrimination within the meaning of article 1. These rights include the right to life. Under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.[22]

9.5 In accordance with general recommendation No. 28 (2010) on the core obligations of States Parties under article 2 of the Convention, States parties have a due diligence obligation to prevent, investigate and punish acts of gender-based violence (para. 19). Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions (para. 34). The Committee also considers that impunity for such offences contributes significantly to the entrenchment of a culture of acceptance of the most extreme forms of violence against women in society, which feeds their continued commission.

9.6 Although it recognizes that the obligation of the State to investigate crimes is one of conduct and not of result, the Committee considers that in the present case, the State party has failed to demonstrate that it made every effort to comply with its obligation under the Convention to investigate the crime, bring the perpetrator(s) to trial, and impose adequate penal sanctions. The State has failed to demonstrate that it took the necessary measures under article 2 (b) and (c) and article 5, read in conjunction with article 1 of the Convention, to act with due diligence in order to ensure an investigation and trial, with the result that the offence went unpunished, and that the authors are victims of a denial of justice.

10. Acting under article 7, paragraph 3, of the Optional Protocol to the Convention, the Committee is of the view that the facts before it reveal a violation of the rights of Pilar Arguello Trujillo under article 2 (b) and (c) and article 5, read in conjunction with article 1 of the Convention. Having reached this conclusion the

[22] The Committee's general recommendation No. 19 on violence against women (1992), paras. 6, 7 and 9.

Committee will not examine the authors' claims under articles 3 and 15 for the same facts.

11. In light of the above conclusions the Committee makes the following recommendations to the State party:

(a) With respect to the authors:

Resume the investigation of the murder of Pilar Arguello Trujillo within a reasonable timeframe in order to identify and eliminate any existing de jure or de facto obstacles that have impeded clarification of the circumstances of the crime and identification of the perpetrators. This would show the State party's commitment to ensuring access to justice for the authors of the present communication;

(b) In general terms, in accordance with the Committee's General Recommendation No. 33 on access to justice, and also referring to its Report under article 8 of the Optional Protocol on Mexico:[23]

(i) Guarantee the functioning of appropriate (efficient, impartial and independent) procedures for investigating, prosecuting and punishing perpetrators of violence against women, especially in cases of femicide;[24]

(ii) Identify and eliminate the structural obstacles impeding the operation of the justice system and the effective investigation of gender-based murders of women. In this regard, criminal investigations should be subjected to constant judicial monitoring, sparing no effort to ensure the adequate punishment of perpetrators;

(iii) Strengthen the implementation of programmes to promote and ensure, in an effective manner, the education and training of all State actors involved in investigations of cases of violence against women, especially in cases involving the extreme violence that constitutes femicide. Such programmes should target, in particular, police officers, prosecutors and judges. The contents should include not only the technical aspects of investigations so as to identify any ineffectiveness and shortcomings in the investigation process and the resulting impunity, but also the causes and consequences of all forms of violence against women;

(iv) Ensure legal support in access to justice and to all legal guarantees of protection for the relatives of women who have died as a result of acts of gender-based violence.

12. In accordance with article 7, paragraph 4, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party shall also publish the Committee's views and recommendations and have them widely distributed in order to reach all relevant sectors of society.

[23] CEDAW/C/2005/OP.8/MEXICO.

[24] See general recommendation No. 35 on gender-based violence against women, 14 July 2017, para. 44.